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| 10/757,432 | 01/15/2004 | Glenn R. Seidman | | 4097 |

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07/26/2007

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| EXAMINER |
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ZURITA, JAMES H

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| ART UNIT | PAPER NUMBER |
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3625

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07/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,432

Applicant(s)

SEIDMAN ET AL.

Examiner

James H. Zurita

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

On 15 January 2004, Applicants filed the instant application. There are no claims to priority.

On 21 July 2005, the application was published as PG-PUB 20050160026.

Election/Restrictions

On 26 April 2007, Applicant elected to prosecute claims 1-25 without traverse and cancelled claims 26-27.

Specification

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting attorneys/agents.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

...

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The Abstract appears to be a repetition of claim 1 and paragraph 7. Please refer to 37 CFR 1.172 and to MPEP 608.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Some examples follow. Please

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review the Application for similar errors. These elements are not shown:

Short-Bidding Bid Manager, **claim 15**; Short-Bidding Sale Analyzer, **claim 24**; Short-Bidding Sale Manager, claim 7; Short-Bidding Sale Reviewer, **claims 18, 19, 23, 25**; Sale-Bidding Bid Manager, claim 15, etc.

The above elements must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1-25 are objected to because of the following informalities:

Claim 1 introduces an Auction Creator. It is not clear whether dependent claims that mention Auction Creator refer to the Auction Creator of claim 1 or whether the dependent claims introduce additional Auction Creator(s).

Claim 5 refers to *...listing an action forever...* The term will be interpreted as *placing an item on auction until it is sold or taken off* Similarly, claim 15 refers to *...automatically...*, a term that is indefinite in the context of a computer.

In claim 10, Sales Executor lacks antecedent basis; the term is introduced in claim 3. Further, the term "...than a new modified asking price..." is indefinite. It is not clear whether applicant claims patentable distinction for a new price that is not modified and how this affects the underlying substrate and component.

Claim 13 refers to *electronic goods...that may [?] be uploaded* and is indefinite. In applicant's disclosures, electronic goods are either uploaded or not uploaded to the Web.

Claims 1-25 contain numerous grammatical errors. For example, in claim 5, *...an Auction Creator that allows sellers to list their auction on a specific good to last forever...* It is not clear how a seller can *list* [an] auction *on* a specific good.

Please review for further inconsistencies. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Some examples follow.

Claims 1-25 refer to *asking price, asking price posted* and will be interpreted as correlating to a seller's posted price in the specifications.

Claims 1-25 contain the label short-bid and it is not possible to identify the metes and bounds of the claims. Paragraph 1 defines Short-bid:

When a bid is less than the price posted, this is known as a "Short-Bid"

Thus, by applicant's definition, short-bids are found in descending auctions such as Dutch Auctions. Prior art will be found to the claim limitations where prior art discloses descending auctions.

Claim 1's limitations appear almost verbatim in the Abstract and in paragraph 7. The limitations are not further explained. Later paragraphs refer, without explanation, to various embodiments. These embodiments appear to be different species of the manager in claim 1. There does not appear to be correlation between what is being claimed and what is described in the disclosures.

Claim 10 consists of multiple condition statements that lead to invoking a component labeled *Sales Executor*. It is not possible to determine the metes and bounds of the claim since it is not clear what action(s) takes place by invoking a component labeled *Sales Executor*. Claim 10 appears to require the following inquiry:

if the asking price was lowered [during auction modification]

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compare the [lowered] asking price and the [which?] short-bid [price]
if the [which?] short-bid is equal to or greater than the [lowered] asking price
then invoke a component labeled Sales Executor [which does what?]

Claim 22 contains the term "...for example..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 23 refers to "...reviewing of both active and expired inactive [?] bids separately and together..." and it is not possible to determine the metes and bounds of the claims.

raising the bid a little or

Claim 24 refers to "what if" analysis of aggregate revenue that are not otherwise mentioned in the disclosures.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-25 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

Claims 1-25 are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 1-25 refer to various Short-Bidding Sale [entity] that are not identified and described in the specifications and drawing. For example:

Short-Bidding Bid Manager, **claim 15**; Short-Bidding Sale Analyzer, **claim 24**; Short-Bidding Sale Manager, claim 7; Short-Bidding Sale Reviewer, **claims 18, 19, 23, 25**; Sale-Bidding Bid Manager, claim 15, etc.

Claim 1 states "...properties of an auction in a database when it is created..." It is not clear what *it* refers to.

Claims 1 and 13 contain the term **means for** and would appear to invoke the sixth paragraph of 35 USC 112, to recite claim element as a means for performing a specified function. However, since the disclosures provide no structural support for the claims, it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). For purposes of this examination, the claims will be interpreted to *not* invoke the sixth paragraph.

Claims 1 and 13 refer to a database. A database is any aggregation of data.¹ A database is a file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions.² For purposes of this examination, the term database will be given its broadest reasonable interpretation to include logical and physical aggregations of data.

Claims 2, 14, 19, 20 and 25 refer to bidder. Other claims refer to buyers and purchasers. The specifications refer to buyer, bidder, potential buyer, etc. It is not clear

¹ Definition of Database, Microsoft Computer Dictionary.

² Definition of Database, MICROSOFT PRESS Computer Dictionary.

whether applicant claims patentable distinction by using different words. The words will be interpreted as synonyms.

Claim 7 refers to ...*list[-ing an] auction with no specific [?] price listed*. A price (\$\$) is either listed or not listed. Prior Art is interpreted to read on claim 7 where prior art discloses RFQs, or where Prior Art discloses a seller's maximum or minimum price.

Claims 9 and 11 refer to "...any or all..." which renders the claims indefinite.

Claim 10 consists of multiple condition statements that lead to invoking a component labeled *Sales Executor*. It is not clear what action takes place when the *Sales Executor* is invoked.

Claims 11, 14 and 16 contain "...or..." which renders the claims indefinite. Prior Art will be interpreted to meet the limitation where prior art meets either condition.

Claim 13 refers to Electronic Good [singular] *Database* and Electronic Good [singular] *Manager*. Claim 15 refers to Electronic Goods [plural] *Repository*. There are also references to *Auction Database*. It is not clear whether applicant claims patentable distinction by using different words.

Claims 14-16 refer to Bid Manager. It is not clear whether these claims refer to the Bid Manager of claim 1 or whether there are multiple Bid Managers.

Claim 22 refers to "...raising the bid a little or a lot during..." rendering the claim indefinite.

Claim 23 refers to "...reviewing of both active and expired inactive bids separately and together..." which renders the claim indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-25, as interpreted, are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta (US 7,130,815).

Prior art will be interpreted to read on applicant's claimed apparatus and parts where prior art discloses apparatus that are reasonable capable of performing the various functions. The various labels do not provide patentable distinction.

As per claim 1, Gupta discloses an apparatus comprising:

- provides the means for buyer and sellers to join an auction website (Col. 6, lines 14-25) and establish pertinent personal information, wherein joining causes creating a user account storing the user account in a database table with a unique user ID employing said user accounts when buying and selling (see at least Col. 10, lines 55-67 and other references to profile database, for example);
- allowing sellers to post information about a good as well as set the quantity and the asking price for the good (see, for example, at least Col. 1, lines 26-35 and references to defined products);

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- storing the properties of an auction in a database when it [the auction] is created (see, for example, at least Col. 2, lines 9-19);
- allowing buyers to set a price for a bid on an item which may be at the asking price or be a short-bid which is less than the asking price and which becomes a contract to buy once submitted (see, for example, at least Col. 5, lines 57-67, Col. 7, lines 1-20);
- providing the list of short-bid contracts for the seller to review (see, for example, Abstract, Col. 3, lines 4-19);
- executing a sale if a bid is at the asking price posted for a good, while it collects and tracks all short-bids as bid contracts no matter how low the price bid is (see at least Col. 3, lines 20-33 and other references to consummating an accepted offer);
- executing a sale between buyer and seller when a bid is placed at the asking price or when the seller decides to accept a short-bid, wherein executing a sale comprises notification to buyer and seller that the buyer's submittal of a contract to buy must be executed (see at least Col. 2, lines 9-19);
- sending emails to sellers and buyers constituting the notifications generated;(see, for example, at least Col. 6, lines 54-67).
- storing the User Accounts, current Auction items , current Bids, Auction History, and Bid History (see, for example, at least Col. 10, line 10-Col. 11, line 35)16-19).

As per claim 2, xxx discloses sending email to sellers and bidders when any salient events occur (see, for example, at least Col. 6, lines 54-67).

As per claim 3, Gupta discloses managing collection of funds from a buyer's account which is then deposited into a seller's account (see at least Col. 10, line 24-Col. 11, line 24)

Auction Creator functions, claims 4-7

As per claim 4, Gupta discloses that sellers list their auction on a specific good to last for a specific time interval (see, for example, at least Col. 2, line 54-Col. 3, line 3).

As per claim 5, Gupta discloses that sellers list their auction on a specific good to last forever (see at least Col. 3, lines 20-34 and references to predetermined period of time).

As per claim 6, Gupta discloses auctions of electronic products. See, for example, at least references to auctions of paid context as in advertisements, as in Col. 11, lines 1-29.

As per claim 7, Gupta discloses that sellers list their auction with no specific [?] price listed and that purchasers may offer bids that may only be accepted later by sellers (see at least Col. 7, lines 1-20).

Auction of Electronic Goods, claims 8 and 13.

As per claim 8, Gupta discloses that sellers list an auction for an electronic good that may be downloaded from a specific location on the web. See, for example, at least references to auctions of paid context as in advertisements, as in Col. 11, lines 1-29.

As per claim 13, Gupta discloses storing, downloading and managing electronic goods in databases and sellers list an auction for an electronic good that may be uploaded to this repository (see at least Col. 10, line 60-Col. 11, line 29 concerning different types of databases).

Auction Editor, claims 9-10.

As per claim 9, Gupta discloses that sellers modify any or all details of an existing auction, or terminate an auction (see, for example, at least Col 3, lines 4-29)

As per claim 10, Gupta discloses modifying existing auction properties and comparing a modified posted price with a short-bid price. See, for example, at lest Col. 3, lines 20-32)

Auction Item Manager

As per claim 11, Gupta discloses auditing any or all salient events on an auction, such as when it was created, when it ended, bid statistics, sales statistics, when it was modified and what was modified (See, for examples, at least Col. 11, lines 10-25 and other references to history and audits)

Bid Manager and Short-Bidding Bid Manager, claims 14-16

As per claim 14, Gupta discloses keeping audit trails on every bidder and seller transaction tracked by bidder and seller individually, wherein bidders and sellers may

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also log their rating of the other party's execution of the transaction (as, in Col. 10, line 60-Col. 11, line 20)

As per claim 15, Gupta discloses rating a seller at the highest rating when the transaction is for an electronic good that was stored. See at least references to detailed analysis of buyers and sellers, as in Col. 11, lines 1-24.

As per claim 16, Gupta discloses auditing every bid and sale, as in Col. 11, lines 8-24.

Short-Bidding Sale Reviewer and Bid Reviewer

As per claim 18, Gupta discloses reviewing all bids using different display filters and sorting criteria. See references to history and audits, as in Col. 10, lines 1-24.

As per claim 19, Gupta discloses selecting and deselecting bidders and accepting bids to execute a sale (see at least references to winners, as in Col. 3, lines 12-18).

As per claim 20, Gupta discloses providing a display filter and sorter based on bidder history and their [bidder? Filter? Sorter?] transaction ratings by others [bidders?]. See references to history and audits, as in Col. 10, lines 1-24.

As per claim 25, Gupta discloses selecting and deselecting bidders and update the analysis (see, for example, at least Col. 10, lines 15-19)

Bid Creator, claims 21-22

As per claim 21, Gupta discloses that buyers offer their bid or bids for a specific time interval, wherein offered bids during their specified time interval are considered active, and are considered inactive otherwise, wherein currently inactive bids that have already been active are considered expired. See at least references to auction closings, as in Col. 12, lines 3-6).

As per claims 24 and 24, Gupta discloses providing "what if" analysis of aggregate revenue for all active bids given a specific lower price, and providing analysis with respect to a future point in time and reviewing bids and bid history (see at least references to detailed analysis of buyers and seller behavior, as in Col. 11, lines 15-20).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta, above.

Interfaces, Claims 12 and 17

As per claim 12, Gupta discloses the use of auction history (see at least Col. 11, lines 15-20 concerning history). **Gupta does not** specifically disclose a user interface screen to review the information. Official Notice is taken that it was old and well known at the time of applicant's invention to review data, including auction history. It would

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have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to include a user interface screen to review auction history. One of ordinary skill in the art at the time the invention was made would have been to extend Gupta to include a user interface screen to review auction history for the obvious reason that screens provide a way to access and information.

Claim 17 is rejected on the same grounds as claim 12.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Montgomery (US PG-PUB 20020038282).

As per claim 22, Gupta does not specifically disclose that buyers customize what their specific bid will be at specific times during the auction, for example, raising the bid a little or a lot during the last 5 minutes of the auction. This is disclosed by Montgomery (paragraph 111). It would have been obvious to one of ordinary skill in the art at t he time the invention was made to combine Gupta and Montgomery to disclose that buyers customize what their specific bid will be at specific times during the auction. One of ordinary skill in the art at t he time the invention was made would have been motivated to combine Gupta and Montgomery to disclose that buyers customize what their specific bid will be at specific times during the auction for the obvious reason that a buyer may wish to buy goods at any price, rather than have the goods go unsold.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Zurita
Primary Examiner
Art Unit 3625
22 July 2007


JAMES ZURITA
PRIMARY EXAMINER